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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,274	02/09/2004	Antonio Fernando Melo e Silva		3411
7590	05/16/2007	Antonio Fernando Melo e Silva	EXAMINER	
Rua da Circulacao			AMINI, JAVID A	
150 - Lousado			ART UNIT	PAPER NUMBER
V.N. Famalicao, 4760-621				2628
PORTUGAL				
			MAIL DATE	DELIVERY MODE
			05/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/774,274	MELO E SILVA, ANTONIO FERNANDO
	<b>Examiner</b>	<b>Art Unit</b>
	Javid A. Amini	2628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 January 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 10-13 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | Paper No(s)/Mail Date. _____.                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____.                         |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/13/2005 has been entered.

The status of claims, as follows:

Claims 1-9 cancelled, see amendment dated 2/14/2006.

Claims 10-11 should be labeled as "previously presented".

Claims 12-13 should be labeled as "new", see claims dated 1/8/2007.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 10-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The geometric figure itself is not considered as a useful process in order to have any functional utilities. The drawing per se as claimed is considered as an abstract design figure; thus, it is not statutory. Furthermore, the abstract drawing should not be applied for Utility Patent because it does not meet the statutory conditions.

The examiner believes that the claim is not for a practical application that produces a useful result, the examiner does not find such a practical application, and the examiner has determined that the claims are nonstatutory.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 10-13 are rejected under 35 U.S.C. 112, first paragraph, because the best mode contemplated by the inventor has not been disclosed. Evidence of concealment of the best mode is based upon the quality of Applicant's disclosure is so poor as to effectively result in concealment.

Claims 10-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. e.g., in claim 10 recites "all the possible manipulations to get new drawings through this geometric figure (figure 1.1) with its proper image".

Examiner's questions:

What are the possible manipulations?

What is an ornamental drawing?

What is the type of new drawing?

What is a proper image?

Claims 10-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The quality of Applicant's disclosure is poor.

Examiner's question:

How does a person skill in the art obtain from "COOL WAVE"?

What are the possible manipulations?

What is an ornamental drawing?

What is the type of new drawing?

What is a proper image?

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-13 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure that goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Claims 10-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

Claims 10-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10-13 are lacked to disclose the invention features and the claims should not be solely based on drawing.

Examiner's comments:

From the amendment filed on 1/8/2007 by applicant, there is no attempt to correct the issues raised either in the final office action or last advisory action or notice of non-compliant amendment. Examiner advices Applicant to study the following section in the MPEP:

**608.01(g) Detailed Description of Invention**  
**608.01(m) Form of Claims [R-3]**

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent. A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the

Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450.

During examination of this application, it appears to Examiner that Applicant does not seem to clearly distinguish the difference between the Utility patent and Design patent. The application appears to be more proper to file as the design patent rather than utility patent. In general, the utility patent must at least satisfy the 35 U.S.C. 101 and 35 U.S.C. 112 second paragraph. 35 U.S.C. 101 states that "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." Applicant's design of Cool Wave is abstract and ornamental article look design. Thus, it does not meet the requirement of 35 U.S.C. 101 statutory. The definition of Design patent is following:

The design patent could be applied for the invention, which is new, original and ornamental design for an article of manufacture.

Applicant's Cool Wave could be belonging to ornamental design.

In a design patent application, the subject matter, which is claimed, is the design embodied in or applied to an article of manufacture (or portion thereof) and not the article itself. In addition, it is not to the design of an article, but to the design for an article, and is inclusive of ornamental designs of all kinds including surface ornamentation as well as configuration of goods." In re Zahn, 617 F.2d 261,204 USPQ 988 (CCPA 1980).

The design for an article consists of the visual characteristics embodied in or applied to an article. Since a design is manifested in appearance, the subject matter of a design patent

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application may relate to the configuration or shape of an article, to the surface ornamentation applied to an article, or to the combination of configuration and surface ornamentation.

Design is inseparable from the article to which it is applied and cannot exist alone merely as a scheme of surface ornamentation. It must be a definite, preconceived thing, capable of reproduction and not merely the chance result of a method.

Examiner's note: The art rejection may not apply to the claim invention, because of existing ambiguities in the claimed invention.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javid A. Amini whose telephone number is 571-272-7654. The examiner can normally be reached on 8-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kee Tung can be reached on 571-272-7794. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Javid A Amini  
Examiner  
Art Unit 2628

J.A.

A handwritten signature in black ink, appearing to read "Javid A." followed by a surname that is partially obscured by a flourish.